

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

**COLLIN GREEN**, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

**EBAY, INC.**,  
A Delaware corporation,

Defendant.

CASE NO.

SECTION:

MAGISTRATE:

COMPLAINT-CLASS ACTION

JURY DEMAND

**CLASS ACTION COMPLAINT**

1. Plaintiff, Collin Green, individually and as a representative of the class defined herein (the “Class”), brings this action against the defendant identified below and avers as follows:

**NATURE OF THE ACTION**

2. This is a consumer privacy class action lawsuit brought by Plaintiff, on behalf of himself, and all other similarly situated persons (hereinafter, “putative class members” or “class members”) against Defendant, eBay, Inc. (“eBay”).

3. eBay is an e-commerce website that holds personal information of is more than 120 million active customers in electronic files it declares “secure.”

4. In February and/or March 2014 eBay’s files were accessed by identity thieves, without eBay’s permission. The thieves had access to, and reportedly copied, customer names, encrypted passwords, email addresses, physical addresses, phone numbers, and dates of birth, *at a minimum*.

5. eBay finally notified its customers of this security breach on May 21, 2014, but only after the security breach had been reported by independent internet sources.

6. The security breach was the result of eBay’s inadequate security in regard to protecting identity information of its millions of customers.

7. eBay’s failure to properly secure this information has caused, and is continuing to cause, damage to its customers, the putative class members herein.

### **PARTIES**

8. Plaintiff, Collin Green (hereinafter “Plaintiff” and/or “Green”) is a citizen of the State of Louisiana and a resident of Orleans Parish, and is of the age of consent.

9. Defendant eBay, Inc., is a Delaware corporation, with its headquarters at 2065 Hamilton Avenue, San Jose, California.

### **JURISDICTION AND VENUE**

10. This Honorable Court has jurisdiction pursuant to 28 U.S.C. §1332(d)(6), as:

- The combined claims of the proposed class members exceed \$5,000,000 exclusive of interest and costs.

- At least one class member is a citizen of a state other than eBay's state of incorporation. And,
- there are over 100 class members in the proposed class.

11. This Court has personal jurisdiction over eBay because Defendants are authorized to do business in the State of Louisiana, have a registered office in Baton Rouge, and principle business establishment in Mandeville, Louisiana. Moreover, eBay provides services and conducts sales within this judicial district.

12. Venue is proper in this Court pursuant to 28 U.S.C § 1391 because many of the actions and transactions give rise to this action in the District and because Defendant is subject to personal jurisdiction in this District.

**EBAY'S INADEQUATE SECURITY DAMAGED THE CLASS.**

13. According to eBay, it is one of the world's largest online marketplaces, connecting millions of buyers and sellers to generate some \$205 billion of commerce in 2013, with over \$4 billion in eBay revenue. eBay proclaims its website "allows users to buy and sell in nearly every country on earth; through PayPal, which enables individuals and businesses to securely, easily and quickly send and receive digital payments...."<sup>1</sup>

14. eBay collects massive amounts of personal information from its more than 120 million customers. eBay does this for its own financial benefit. eBay tracks individual customers and uses information like cellular phone location, transaction histories, and the website customers come from, or leave to, in order to know the intimate details of the customers' movements.

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<sup>1</sup> eBay, Inc., Form 8-K, May 21, 2014.

15. The terms “personal information,” “personally identifiable information (PII),” and similar variants are used herein to describe a broad and unlimited category of information that can be used by criminals to achieve identity fraud. The information includes the obvious items like names, passwords, birth dates, etc., but also includes internet identification information like IP addresses, log on names, phone type, device location, and many, many more.

16. eBay knows how valuable the personal information it chooses to hold, for its benefit, is to identity thieves and promises to keep the information secure. Identity fraud is a \$25 billion a year criminal industry.

17. The FTC warns, “[o]nce identity thieves have your personal information, they can drain your bank account, run up charges on your credit cards, open new utility accounts, or get medical treatment on your health insurance. An identity thief can file a tax refund in your name and get your refund. In some extreme cases, **a thief might even give your name to the police during an arrest.**”<sup>2</sup>

18. In February and March 2014 identity thieves, presumably without eBay’s permission, accessed eBay’s files. According to eBay, the thieves had access to, and reportedly copied:

- customer's names
- encrypted passwords
- email addresses
- physical addresses
- phone numbers
- dates of birth

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<sup>2</sup> *What Do Thieves Do With Your Information?*, at <http://www.consumer.ftc.gov/articles/0271-signs-identity-theft#What> [*emphasis added*]

19. According to its Privacy Policy, eBay also collects and stores significantly more detailed categories of personal information on each customer, including, but not limited to:

- credit card or bank account numbers
- phone number and mobile telephone number
- computer device ID or unique identifier
- device type
- geo-location information
- computer and connection information
- statistics on page views,
- traffic to and from the sites
- referral URL
- IP address, and standard web log information
- transactional information based on your activities on the sites (such as bidding, buying, selling, item and content you generate or that relates to your account);
- shipping, billing and other information [customers] provide to purchase or ship an item;
- information provided in the context of community discussions, chats, dispute resolution, correspondence through our sites, or correspondence sent to [eBay];

20. At this time Plaintiff is unsure how much, if any, of these additional highly detailed classes of personal information were also stolen due to eBay's failures.

21. eBay finally notified its customers of the February-March security breach on May 21, 2014, but only after the security breach had been reported by independent internet sources. The notice provided only instructed the millions of impacted customers to change their passwords. eBay did not inform its customers that they were almost ten times more likely to suffer identity fraud as a result of eBay's failure.

22. The security breach was the result of eBay's inadequate security in regard to protecting identity information of its millions of customers.

23. eBay was aware of the value of the personal information it held, and the threat to the security of that information long before the 2014 security breach. In its first quarter 2014 10-Q SEC filing, eBay acknowledged that security breaches were a constant threat, stating in part, “[o]ur business is subject to online security risks, including security breaches.”

24. eBay further revealed in its 10-Q that market perception that eBay was not secure represented a risk to its financial results. eBay summarized the risk as follows: “Factors that may affect our operating and financial results include...

- consumer confidence in the safety and security of transactions using our websites and technology (including through mobile devices) and customer concerns arising from the actual or perceived use of personally identifiable information and the effect of any changes in our practices and policies or of any events such as the Target breach or the Heartbleed bug on such confidence; ...
- continued consumer acceptance of the Internet and of mobile devices as a medium for commerce and payments in the face of increasing publicity about data privacy issues, including data breaches, fraud, spoofing, phishing, viruses, spyware, malware and other dangers”

25. eBay acknowledged its general and legal obligation to protect private information under certain statutes in its February 10-Q filing:

- “We are subject to laws relating to the collection, use, retention, security and transfer of personally identifiable information about our users around the world. Much of the personal information that we collect, especially financial information, is regulated by multiple laws.”<sup>3</sup>
- “If an actual or perceived breach of our security occurs, public perception of the effectiveness of our security measures could be harmed, resulting in damage to our reputation and we could lose users. **Also any compromise of our security could result in a violation of applicable privacy and other laws, and expose us to significant legal and financial consequences**”<sup>4</sup>

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<sup>3</sup> eBay 10-Q, February, 1, 2014, p. 57.

<sup>4</sup> eBay 10-Q, February, 1, 2014, p. 57. [*emphasis added*]

- “Any failure, or perceived failure, by us to comply with our posted privacy policies or with any regulatory requirements or orders or other federal, state or international privacy or consumer protection-related laws and regulations...could result in proceedings or actions against us by governmental entities or others (e.g., class action privacy litigation), subject us to significant penalties and negative publicity, require us to change our business practices, increase our costs and adversely affect our business. The FTC and state regulatory agencies have become more aggressive in enforcing privacy and data protection laws and regulations.”<sup>5</sup>

26. Fully aware its market perception, and thus bottom-line, could be damaged, eBay did not immediately notify its customers when it first became aware of the February 2014 security breach(es). Instead, eBay waited to inform customers until after the news had leaked out of the company.

27. eBay’s profit-driven decision to withhold the fact of its security lapse further damaged the class members who were prevented from immediately mitigating the damages from the theft. As the FTC warns, “[i]f you suspect that someone is misusing your personal information, **acting quickly is the best way to limit the damage.**”<sup>6</sup>

28. The theft of personal information is extremely harmful to eBay’s customers and leaves them at increased risk of significant damages, and forces them to incur continuing expenses to property mitigate the damages caused. As the Federal Trade Commission (FTC) has explained:

Identity theft happens when someone steals your personal information and uses it without your permission. It’s a serious crime that can wreak havoc with your finances, credit history, and reputation — and can take time, money, and patience to resolve.<sup>7</sup>

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<sup>5</sup> *Id.*, p. 59.

<sup>6</sup> *What Do Thieves Do With Your Information?*, at <http://www.consumer.ftc.gov/articles/0271-signs-identity-theft#What> [*emphasis added*]

<sup>7</sup> <http://www.consumer.ftc.gov/features/feature-0014-identity-theft>

29. Identity theft is a massive criminal industry worldwide. The Department of Justice reports that, “Direct and indirect losses from identity theft totaled \$24.7 billion in 2012.”<sup>8</sup>

30. The report by the DOJ goes on to put the size of the identity-theft market in proper relief: “Identity theft losses were over **4 times greater** than losses due to stolen money and property in burglaries (\$5.2 billion) and theft (\$5.7 billion), and eight times the total losses associated with motor vehicle theft (\$3.1 billion).”<sup>9</sup>

31. Identity theft is also a time consuming crime for the victim, often taking more than a year to resolve, and causing “moderate or severe emotional distress” to 36% of reported victims. And, according to the DOJ, “victims who experienced the misuse of their personal information reported a mean direct loss of \$9,650 and a median direct loss of \$1,900.”<sup>10</sup>

32. Victims also suffer long-term damage beyond the immediate financial and emotional damage caused by identity theft. The DOJ reports identity fraud victims also:

- experienced other financial and legal problems;
- paid higher interest rates on credit cards,
- were turned down for loans or other credit,
- their utilities were turned off, or
- they were the subject of criminal proceedings.

33. Studies indicate that individuals whose personal information is stolen are approximately 9.5 times more likely than other people to suffer identity fraud. Moreover, it can take time before the identity thieves use the stolen information. A vast international market exists

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<sup>8</sup> *Victims of Identity Theft, 2012*, Erika Harrell, Ph.D. and Lynn Langton, Ph.D., Bureau of Justice Statistics, December 2013, NCJ 243779; <http://www.bjs.gov/content/pub/pdf/vit12.pdf>

<sup>9</sup> *Id.*, (*emphasis added*)

<sup>10</sup> *Id.*



for personal information. Criminals who now possess Plaintiffs' and the class members' personal information may hold the information for later use, or continue to sell it between identity thieves.

34. Thus, Plaintiff and the class members must be vigilant for many years in checking for fraud in their name, and be prepared to deal with the steep costs associated with identity fraud.

35. eBay's security was not only unreasonably lax in regard to intrusion, but eBay claims it remained unaware of the breaches for weeks, or months, after they occurred.

36. Industry security experts have lambasted eBay for its failure to properly secure the data in its possession.

37. eBay did not even encrypt much of the information stolen, including customer names, email addresses, physical addresses, phone numbers, and birthdays. eBay has not released information about the volumes of other personal data it stores – *i.e.*, IP addresses, geo-location, purchases, IDs, *etc.* The vice president of security research at Trend Micro, said it was “inexcusable” that eBay failed to encrypt much of the personal information stolen.

38. eBay claims it encrypted passwords, *but only in the least safe method*. According to industry reports, eBay chose to use the cheaper security method of encryption as opposed to hashing, with full knowledge that hashing was much more secure and preferred by security experts. Once a hacker steals the encryption key, the complex nature of a “strong” encrypted password is irrelevant as the hacker can simply reveal the password with the encryption key. With hashing, the hacker still cannot access the password.

39. eBay made the conscious decision not to upgrade its security protocols in order to prop up its \$4-plus billion dollar yearly revenue stream; laying the risk of identity theft at the feet of its customers.

40. eBay made this reckless decision in spite of the knowledge gained from the recent (and highly public) *Target* and *Adobe* security breaches, just to name two of the many in recent years. This profit-oriented decision was unreasonable in light of the known threats, and constitutes a breach of eBay's duties to its customers.

41. While propping up its profits by neglecting security needs, eBay simultaneously under-insured the risks it knowingly took. eBay's February 1, 2014, 10-Q admits "[o]ur insurance policies carry low coverage limits, which may not be adequate to reimburse us for losses caused by security breaches and we may not be able to fully collect, if at all, under these insurance policies." This is another in the line of decisions eBay made in order to protect short-term profits by pushing its security risk (and expense) onto its customers, while providing a false sense of security.

42. Beyond the federal statutes and regulations regarding customer identity information, many states have enacted legislation to protect their citizens from the damaging effects of short-term profit seeking that puts data at risk. In fact, all but four states currently have breach of personal information security laws in effect.

43. The Plaintiff, like all the putative class members, had an eBay account. He provided extensive personal information in exchange for the right to access eBay's website. And he was notified on or around May 21, 2014, that he should change his password since an attack had "compromised" eBay's database.

#### **COUNT I – NEGLIGENCE**

44. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

45. Louisiana Civil Code Article 2315 concisely states that, “[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.” This law, and the sections that follow it, dictate that eBay is responsible to repair all the damage caused to the Plaintiff and putative class members as a result of the theft of their personal information.

eBay negligently, and/or recklessly, failed to adopt safeguards that would have prevented the data breach from occurring.

46. eBay negligently, and/or recklessly, failed to adopt safeguards that would have prevented the data breach from resulting in the theft of millions of files of personal information of the class.

47. eBay negligently, and/or recklessly, failed to notify the plaintiff and putative class members of the breach as soon as possible, thus causing additional damage.

48. eBay owed Plaintiff and the putative class a duty of care to protect the personal information it insisted on holding.

49. Plaintiff and the putative class members are in the class of persons that eBay should have reasonably foreseen as being subject to the harm caused by the insufficient security protocols in place at the time of the security breach and information theft.

50. Plaintiff and the putative class members had no way to protect themselves from the damage eBay facilitated.

51. Defendant should have foreseen, detected, and prevented the security breach, and the resulting theft of personal information.

52. Defendant breached its duty of care by failing to implement security protocols sufficient to impede known threats.

53. eBay also breached its duty by failing to notify its customers of the breach in a reasonable time.

54. Defendant's conduct was at a minimum negligent and likely careless or reckless.

55. Plaintiff and the putative class members have suffered economic damages through no fault of their own as a direct and proximate result of the eBay's conduct.

## **COUNT II – FEDERAL STORED COMMUNICATIONS ACT**

56. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

57. The Stored Communications Act ("SCA"), 18 U.S.C. §2702, is designed to protect the privacy interest of users of electronically transmitted information. See, S. Rep. No. 99-541, at 3 (1986), *reprinted in* 1986 U.S.C.C.A.N. 3555.

58. eBay violated the Act by negligently, and/or recklessly, failing to protect the personal information it held through appropriate security measures.

59. eBay provides electronic communications between buyers and sellers of merchandise via its remote computing services. In order to access eBay's buy/sell functions the class members were compelled to provide eBay with significant personal information. eBay failed to take commercially reasonable steps to protect this information in spite of the known threat and known weakness of its internal security.

60. eBay chose to use a cheaper protocol, or put off security upgrades, in order to obtain short-term profit goals. By actively choosing to put the cost of lax security on the customers instead of on its ledger, eBay knowingly divulged the personal information of the class members to thieves whose only goal was to get that information.

61. As a result of eBay's conduct, Plaintiff and the putative class members have suffered actual identity theft, as well as (i) improper disclosure of their personal information; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity fraud due to eBay's failures; (iii) the value of their time spent mitigating identity theft and/or identity fraud, and/or the increased risk of identity theft and/or identity fraud; (iv) and deprivation of the value of their personal information, for which there is a well-established international market.

62. Plaintiff, on his own behalf and on behalf of the putative class members, seeks an order awarding the class members the maximum statutory damages available under 18 U.S.C. § 2707, in addition to the cost for 5 years of credit monitoring services.

**CLAIM III - LOUISIANA R.S. 51:3072, *ET SEQ.***

63. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

64. As summarized in La. R.S. 51:3072, the Louisiana legislature had determined that:

- The privacy and financial security of individuals are increasingly at risk due to the ever more widespread collection of personal information.
- Credit card transactions, magazine subscriptions, telephone numbers, real estate records, automobile registrations, consumer surveys, warranty registrations, credit reports, and Internet web sites are all sources of personal information and form the source material of identity theft.
- The crime of identity theft is on the rise in the United States. Criminals who steal personal information use the information to open credit card accounts, write bad checks, buy automobiles, and commit other financial crimes using the identity of another person.
- Identity theft is costly to the marketplace and to consumers.
- Victims of identity theft must act quickly to minimize the damage; therefore, expeditious notification of possible misuse of a person's personal information is imperative.

65. La. R.S. 51:3074 dictates that eBay immediately notify each Louisiana citizen whose personal information was accessed through the security breach at issue, in order to quickly minimize the damage of the theft. eBay failed to comply with this statutory mandate.

66. Plaintiff, on his own behalf and on behalf of the putative class members, seeks an order awarding the class members the maximum statutory damages available under La. R.S. §51:3702, *et seq.*, in addition to the cost for 5 years of credit monitoring services.

#### CLAIM IV – BREACH OF CONTRACT

67. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

68. Plaintiff and the putative class members entered into valid contracts with eBay in order to gain access to eBay's computer services.

69. eBay's applicable privacy policy expressly promises to protect its customer's personal information, stating, in pertinent part:

***How We Protect and Store Your Personal Information***

We store and process your personal information on our computers in the US and elsewhere in the world where our facilities are located. **We protect your information** using technical and administrative security measures to reduce the risks of loss, misuse, unauthorized access, disclosure and alteration. Some of the safeguards we use are firewalls and data encryption, physical access controls to our data centers, and information access authorization controls.<sup>11</sup>

70. Plaintiff and the putative class members agreed to provide their information in exchange for access to eBay's services, and based on the promise the information would be safeguarded.

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<sup>11</sup> <http://pages.ebay.com/help/policies/privacy-policy.html#collection1> [*emphasis added*]

71. Under this contract eBay is obligated to use commercially reasonable means to protect its customer's personal information. In light of the known and reasonably anticipated threats to its customers, eBay failed to reasonably protect the private information that was stolen.

72. Under the contract, eBay does not have the right to allow third parties to access its customers personal information files, except for explicitly detailed situations. Those situations do not include allowing access to identity thieves.

73. eBay's failure is an express breach of contract.

74. eBay's failure has and will cause Plaintiff and the putative class members to incur costs including, but not limited to, years of identity protection services and credit checks even if they are never subject to active identity fraud.

75. Additionally, all putative class members who paid fees to eBay suffered additional damages in the amount of the difference between eBay's actual fee and the fee that would apply if the costs of adequate security was deducted.

76. Adequate protection of personal information was a material part of the contracts between eBay and Plaintiff (and the class members). Plaintiff and the class members paid for protections that they did not receive.

77. Additionally, as a result of eBay's breach, Plaintiff and the putative class members suffered actual identity theft, as well as damages in the form of: (i) improper disclosure of their personally identifiable information; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity as a result of the security beach; (iii) the value of their time spent mitigating identity theft and/or identity fraud, and/or the increased risk of identity theft

and/or identity fraud; (iv) and deprivation of the value of their personal information, for which there is a well-established international market.

78. These damages were within the contemplation of eBay and the Plaintiff at the time that they contracted.

**CLAIM V – BREACH OF IMPLIED CONTRACT**  
***(Pleaded in the alternative to Count IV)***

79. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

80. In order to benefit from eBay's services, Plaintiffs and the putative class members were required to disclose their personal information to eBay.

81. By providing this information, at eBay's demand, and by eBay accepting the information and supplying privacy policies for that information, Plaintiff, like the class members, entered into an implied contract with eBay.

82. Part of the implied contract is that eBay would protect the personal information of its customers with reasonable diligence in light of known and anticipated threats.

83. eBay's failure is an express breach of the implied contract.

84. eBay's failure has and will cause Plaintiff and the putative class members to incur costs including, but not limited to, years of identity protection services and credit checks even if they are never subject to active identity fraud.

85. Additionally, all putative class members who paid fees to eBay suffered additional damages in the amount of the difference between the eBay's actual fee and the fee that would apply if the costs of adequate security was deducted.



86. Adequate protection of personal information was a material part of the contracts between eBay and Plaintiff (and the class members). Plaintiff and the class members paid for protections that they did not receive.

87. Additionally, as a result of eBay's breach, Plaintiff and the putative class members suffered actual identity theft, as well as damages in the form of: (i) improper disclosure of their personally identifiable information; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity as a result of the security breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud, and/or the increased risk of identity theft and/or identity fraud; (iv) and deprivation of the value of their personal information, for which there is a well-established international market.

#### **CLAIM VI – BREACH OF FIDUCIARY DUTY**

88. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

89. As custodian of Plaintiff's personal information, eBay owed a fiduciary duty to protect the data from illegal access.

90. eBay breached its duty by failing to adequately protect information from known, and reasonably anticipated threats.

91. As a result of eBay's breach, Plaintiff and the putative class members suffered actual identity theft, as well as damages in the form of: (i) improper disclosure of their personally identifiable information; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity as a result of the security breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud, and/or the increased risk of identity theft and/or

identity fraud; (iv) and deprivation of the value of their personal information, for which there is a well-established international market.

#### **CLAIM VII – BAILMENT**

92. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

93. Plaintiff and the class members entrusted their private information to eBay for the sole purpose of accessing eBay's services.

94. During the time of bailment, eBay owed Plaintiff and the class members a duty to safeguard this information properly and maintain reasonable security procedures to protect such information. eBay breached this duty.

95. As a direct and proximate result of these breaches of duty, Plaintiff and the class members have suffered harm.

96. Plaintiff seeks actual damages on behalf of the Class.

#### **CLAIM VIII – VIOLATION OF GRAMM-LEACH-BLILEY ACT, 15 U.S.C. § 6801**

97. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

98. eBay offers financial and credit services. eBay offers PayPal Buyer Credit, PayPal Plus Credit Card, and eBay MasterCard ("PayPal Credit"). PayPal has an account for each user, and those accounts hold customer funds (U.S. Dollars). PayPal sends monthly statements so its customers can track the value of their accounts. PayPal provides FDIC insurance for customer funds in its control.

99. eBay's PayPal subsidiary website proclaims, "All your money is secure and accounted for behind one secure account."<sup>12</sup> For additional rules regarding the privacy of your information, PayPal directs you back to eBay: "More detailed information about our privacy practices, along with our contact information, is available at the eBay Privacy Center."<sup>13</sup>

100. As eBay states, it will collect and transmit financial data to facilitate financial products it sells:

Use of Personal Information

... You agree that we may use your personal information to: provide you access to our sites and the services and customer support you request; provide customer support you request for **financial products offered by members of our corporate family and their financial institution partners (such as Bill Me Later, a PayPal service)**.<sup>14</sup>

101. As an entity transmitting financial information to facilitate financial services, eBay failed to comply with the obligations of 15 U.S.C. § 6801, *et seq.*, regarding the protection of personal information supplied by Plaintiff and the class members.

102. As a direct and proximate result of these violations, Plaintiff and the class members have suffered harm.

103. Plaintiff seeks actual damages on behalf of the class.

**COUNT IX – VIOLATION OF MULTI-STATE PRIVACY LAWS**

104. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

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<sup>12</sup> <https://www.paypal.com/webapps/mpp/paypal-safety-and-security>

<sup>13</sup> <https://www.paypal.com/us/webapps/mpp/ua/privacy-full>

<sup>14</sup> eBay, Inc., Privacy Policy Effective October 26, 2013, <http://pages.ebay.com/help/policies/privacy-policy.html> [*emphasis added*]

105. eBay's failure to protect the personal information of Plaintiff and the putative class members violates the laws of at least 47 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

106. Plaintiff brings Count IX individually and on behalf of all similarly situated residents of each of the 47 states (and territories) with personal information protection laws, including, but not limited to the following:

<b>State</b>	<b>Citation</b>
Alaska	Alaska Stat. § 45.48.010 <i>et seq.</i>
Arizona	Ariz. Rev. Stat. § 44-7501
Arkansas	Ark. Code § 4-110-101 <i>et seq.</i>
California	Cal. Civ. Code §§ 1798.29, 1798.80 <i>et seq.</i>
Colorado	Colo. Rev. Stat. § 6-1-716
Connecticut	Conn. Gen Stat. § 36a-701b
Delaware	Del. Code tit. 6, § 12B-101 <i>et seq.</i>
Florida	Fla. Stat. § 817.5681
Georgia	Ga. Code §§ 10-1-910, -911, -912; § 46-5-214
Hawaii	Haw. Rev. Stat. § 487N-1 <i>et seq.</i>
Idaho	Idaho Stat. §§ 28-51-104 to -107
Illinois	815 ILCS §§ 530/1 to 530/25
Indiana	Ind. Code §§ 4-1-11 <i>et seq.</i> , 24-4.9 <i>et seq.</i>
Iowa	Iowa Code §§ 715C.1, 715C.2
Kansas	Kan. Stat. § 50-7a01 <i>et seq.</i>
Kentucky	2014 H.B. 5, H.B. 232
Louisiana	La. Rev. Stat. § 51:3071 <i>et seq.</i>
Maine	Me. Rev. Stat. tit. 10 § 1347 <i>et seq.</i>

<b>State</b>	<b>Citation</b>
Maryland	Md. Code Com. Law §§ 14-3501 <i>et seq.</i> , Md. State Govt. Code §§ 10-1301 to -1308
Massachusetts	Mass. Gen. Laws § 93H-1 <i>et seq.</i>
Michigan	Mich. Comp. Laws §§ 445.63, 445.72
Minnesota	Minn. Stat. §§ 325E.61, 325E.64
Mississippi	Miss. Code § 75-24-29
Missouri	Mo. Rev. Stat. § 407.1500
Montana	Mont. Code § 2-6-504, 30-14-1701 <i>et seq.</i>
Nebraska	Neb. Rev. Stat. §§ 87-801, -802, -803, -804, -805, -806, -807
Nevada	Nev. Rev. Stat. §§ 603A.010 <i>et seq.</i> , 242.183
New Hampshire	N.H. Rev. Stat. §§ 359-C:19, -C:20, -C:21
New Jersey	N.J. Stat. § 56:8-163
New York	N.Y. Gen. Bus. Law § 899-aa, N.Y. State Tech. Law 208
North Carolina	N.C. Gen. Stat §§ 75-61, 75-65
North Dakota	N.D. Cent. Code § 51-30-01 <i>et seq.</i>
Ohio	Ohio Rev. Code §§ 1347.12, 1349.19, 1349.191, 1349.192
Oklahoma	Okla. Stat. §§ 74-3113.1, 24-161 to -166
Oregon	Oregon Rev. Stat. § 646A.600 <i>et seq.</i>
Pennsylvania	73 Pa. Stat. § 2301 <i>et seq.</i>
Rhode Island	R.I. Gen. Laws § 11-49.2-1 <i>et seq.</i>
South Carolina	S.C. Code § 39-1-90, 2013 H.B. 3248
Tennessee	Tenn. Code § 47-18-2107
Texas	Tex. Bus. & Com. Code §§ 521.002, 521.053, Tex. Ed. Code § 37.007(b)(5)
Utah	Utah Code §§ 13-44-101 <i>et seq.</i>
Vermont	Vt. Stat. tit. 9 § 2430, 2435

State	Citation
Virginia	Va. Code § 18.2-186.6, § 32.1-127.1:05
Washington	Wash. Rev. Code § 19.255.010, 42.56.590
West Virginia	W.V. Code §§ 46A-2A-101 <i>et seq.</i>
Wisconsin	Wis. Stat. § 134.98
Wyoming	Wyo. Stat. § 40-12-501 <i>et seq.</i>
District of Columbia	D.C. Code § 28- 3851 <i>et seq.</i>
Guam	9 GCA § 48-10 <i>et seq.</i>
Puerto Rico	10 Laws of Puerto Rico § 4051 <i>et seq.</i>
Virgin Islands	V.I. Code tit. 14, § 2208

107. As a direct and proximate result of the violations of these statutes, putative class members in these states have suffered harm.

108. Plaintiff seeks actual damages on behalf of the class.

#### **COUNT X – FEDERAL FAIR CREDIT REPORTING ACT**

109. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

110. The Fair Credit Reporting Act (FCRA), Title 15 U.S.C. §1681, *et seq.*, limits the collection and release of personal information.

111. eBay offers financial and credit services. eBay offers PayPal Buyer Credit, PayPal Plus Credit Card, and eBay MasterCard ("PayPal Credit"), among other financial services.

112. eBay, and its PayPal subsidiary, routinely collect and distribute highly specific personal information regarding their member's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and that

information is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing eligibility for credit or insurance.

113. As eBay states in its Privacy Policy:

Use of Personal Information

... You agree that we may use your personal information to: provide you access to our sites and the services and customer support you request; provide customer support you request for **financial products offered by members of our corporate family and their financial institution partners (such as Bill Me Later, a PayPal service)**.<sup>15</sup>

114. eBay, and its “corporate family and their financial institutions” may deny services, or alter rates and discounts, based on the information eBay collects and shares.

115. eBay also supplies information to consumer credit reporting agencies.

116. eBay specifically states that it may use your personal information to advance collection efforts by third party collection agencies.

117. As such, eBay is bound to comply with the FCRA.

118. eBay violated the FCRA by negligently, recklessly, and/or knowingly, distributing protected information and failing to take commercially reasonable steps to protect this information in spite of the known threat and known weakness of its internal security.

119. eBay chose to use a cheaper protocol, or put off security upgrades, in order to obtain short-term profit goals. By intentionally choosing to put the cost of lax security on the customers in order to enhance its profits, eBay knowingly divulged the personal information of the class members to thieves, in violation of the FCRA.

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<sup>15</sup> eBay, Inc., Privacy Policy Effective October 26, 2013, <http://pages.ebay.com/help/policies/privacy-policy.html> [*emphasis added*]

120. As a result of eBay's conduct, Plaintiff and the putative class members have suffered actual identity theft, as well as (i) improper disclosure of their personal information; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity fraud due to eBay's failures; (iii) the value of their time spent mitigating identity theft and/or identity fraud, and/or the increased risk of identity theft and/or identity fraud; (iv) and deprivation of the value of their personal information, for which there is a well-established international market.
121. Plaintiff, on his own behalf and on behalf of the putative class members, seeks an order awarding the class members the maximum statutory damages available under 15 U.S.C. § 1681, in addition to the cost for 5 years of credit monitoring services.

#### **CLASS ALLEGATIONS**

122. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) and the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d)(2).
123. Plaintiff brings this action on behalf of a class consisting of all customers of eBay in the United States that provided personal information to eBay, and had their personal information accessed by unauthorized third parties by breaching eBay's security system.
124. Excluded from the Class are (i) eBay, Inc., and its legal representatives, predecessors, successors, and assigns, as well as its subsidiaries and joint-venture partners; (ii) the judicial officers to whom this case is assigned; and, (iii) any member of the immediate families of excluded persons.
125. All members of the class suffered economic harm as a direct and proximate result of eBay's inadequate security.



126. Based on Defendants' assertion, there are over 125 million putative class members in the United States. The number of putative class members is thus so numerous that joinder of all members is impracticable.
127. The injuries to the class members flow from a common nucleus of operative facts; namely that eBay collected personal information it knew was highly valuable to thieves, and took inadequate steps to protect that information, in breach of its obligations and the laws of 47 states and the United States. The information was stolen, and eBay waited an unreasonably long time to either detect or report the theft to its customers. The failure damaged each customer as each will, at a minimum, incur significant identity protection costs and concerns.
128. Questions of law and fact common to the putative class members predominate over any questions that affect only individual class members. The predominant common questions include:
- Whether Defendant adequately safeguarded Plaintiff's and class members' personal information;
  - Whether eBay's conduct violated any of the statutes or causes of action detailed above;
  - Whether eBay's conduct violates any other state or federal statutes;
  - Whether eBay willfully, recklessly, and/or negligently failed to maintain reasonable procedures designed to prevent unauthorized access to Plaintiff's and the class members' personal information;

- Whether eBay breached its duty to protect plaintiff's and the class members' personal information;
- Whether eBay's storage and protection protocols were reasonable in light of known and reasonably anticipated threats;
- Whether an express or implied contract existed between Plaintiff and eBay, and each putative class member and eBay.
- Whether eBay's conduct constitutes a breach of contract;
- Whether eBay failed to disclose material facts regarding its data security practices;
- Whether Plaintiff and the class members sustained damages as a result of eBay's failure to protect their personal information;
- Whether eBay violated federal and/or state laws by failing to timely notify Plaintiff and the class members on an individual basis about the theft and dissemination of their personal information;

129. Plaintiff's claims are typical of the claims of the putative class members, as all damage claims are based on the same factual and legal theories regarding the failed security protocols employed by eBay to secure their private information.

130. Plaintiff will fairly and adequately represent the interests of the class members.

131. Plaintiff has retained counsel experienced in consumer class action litigation.

132. Plaintiff has no interests that conflict with, or are adverse to, those of the class.

133. A class action is superior to other alternative methods of adjudicating this dispute.

134. The relief sought per individual member of the Class is material to the class members, but not sufficient to warrant the expense of individual prosecution of each claim on an individual basis. It would be virtually impossible for the Class members to seek redress on an individual basis given the cost of expert analysis, and legal expenses.
135. Moreover, the court system should not be burdened with a mass of nearly identical “small” value suits. The risk of repetitive proceedings, differing results, and management difficulties make the class apparatus designed by Congress the proper procedural path.
136. If a class action is not allowed, it is likely eBay would retain the windfall benefits of its decision to ignore needed security and lay the risk of a security breach on its customers.

#### **REQUESTED RELIEF**

**WHEREFORE**, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the class against eBay, Inc., for:

- a) An Order certifying the case as a class action, appointing Plaintiff as Class Representative and appointing Plaintiff’s counsel as Lead Class Counsel;
- b) Compensatory damages;
- c) Consequential damages;
- d) For injunctive relief, declaratory relief, order, or judgment as necessary or appropriate to prevent these acts or practices;
- e) Costs of suit, including reasonable attorneys’ fees and expenses as permitted by law;
- f) Pre-judgment and post-judgment interest; and
- g) Such other or further relief as the Court deems proper.

**JURY DEMAND**

Plaintiff, on behalf of himself and all others similarly situated, demands a trial by jury.

Dated: July 23, 2014

RESPECTFULLY SUBMITTED:

**O'BELL LAW FIRM, L.L.C.**

/s/ Charles F. Zimmer  
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